

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

GEORGE P. CLARK, Trustee in Bankruptcy of  
the Estate of EDNA G. MILENS,  
Appellant,

vs.

EDNA G. MILENS,  
Appellee.

---

Transcript of Record.

---

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON.

---

FILED

JUL 2 - 1928

PAUL P. O'BRIEN,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

GEORGE P. CLARK, Trustee in Bankruptcy of  
the Estate of EDNA G. MILENS,  
Appellant,  
vs.  
EDNA G. MILENS,  
Appellee.

---

Transcript of Record.

---

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON.

---



# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Answer to Rule to Show Cause Why Edna G. Milens Should not be Punished for Contempt for Failure to Obey Lawful Order	9
Assignments of Error .....	24
Citation on Appeal .....	20
Findings of Referee .....	4
Opinion (Oral) .....	14
Order Allowing Appeal Without Bond .....	26
Order Purging of Contempt .....	18
Order Requiring Edna G. Milens to Turn Over to Her Trustee Assets Unaccounted for to Such Trustee .....	3
Petition for Order Allowing Appeal from an Order Made by the District Court of the United States for the District of Oregon Purging Edna G. Milens of Contempt....	22
Referee's Certificate of Contempt for Failure to Obey Lawful Order .....	1
Rule to Show Cause Why Edna G. Milens Should not be Punished for Contempt for Failure to Obey Lawful Order .....	7



In the District Court of the United States for the  
District of Oregon.

November Term, 1927.

BE IT REMEMBERED, That on the 21st day of November, 1927, there was duly filed in the District Court of the United States for the District of Oregon, a Referee's Certificate of Contempt for Failure to Obey Lawful Order, in words and figures as follows, to wit: [1\*]

In the District Court of the United States for the  
District of Oregon.

No. 10,261.

In the Matter of EDNA G. MILENS, Doing Business as GUARANTEE SHOE STORE,  
Bankrupt.

REFEREE'S CERTIFICATE OF CONTEMPT  
FOR FAILURE TO OBEY LAWFUL  
ORDER.

To the United States District Court for the District  
of Oregon:

I, A. M. Cannon, one of the Referees in Bankruptcy of this Court, do report and certify that on the 22d day of July, 1927, I made an order requiring Edna G. Milens, the above-named bankrupt, to account for and pay over to George P. Clark, Trustee in Bankruptcy of the above-entitled bankrupt estate, on or before five days from the date of said

---

\*Page-number appearing at the foot of page of original certified Transcript of Record.

order, the sum of \$5,377.37 belonging to said estate and which amount was in her possession and under her control at said date, and which was at said time being fraudulently concealed from the said Trustee in Bankruptcy of the above-entitled bankrupt estate.

At the time of the entry of said order the said Edna G. Milens was present in person before me and also was represented by her counsel of record, James H. McMinnamen.

That said order was also personally served upon her by a copy thereof being delivered to her in person on the 23d day of July, 1927, as shown by the affidavit of service, on file with the records of this cause.

A copy of said order is filed herewith and made a part hereof and there is also attached hereto and made a part hereof my findings upon which the order so made by me on the 22d day of July, 1927, was based.

I further certify that the said Edna G. Milens has failed to comply with said order and that the time within which to comply with the same has now expired.

I further find that the said Edna G. Milens is in contempt of court for failure to obey said order and therefore recommend that she be punished for contempt and committed until she shall have paid to her said Trustee the sum of \$5,377.37. [2]

All of which is respectfully submitted.

Dated this 24th day of August, 1927.

A. M. CANNON,  
Referee in Bankruptcy. [3]



[Title of Court and Cause.]

ORDER REQUIRING EDNA G. MILENS TO  
TURN OVER TO HER TRUSTEE AS-  
SETS UNACCOUNTED FOR TO SUCH  
TRUSTEE.

George P. Clark, the trustee herein, having applied to this Court for an order requiring the bankrupt herein to forthwith account for and pay over to the trustee the sum of \$5,377.37 in cash belonging to said estate in bankruptcy and alleged by the trustee to be in the possession of the said bankrupt and to be concealed by her from her trustee, and an order to show cause having been issued out of this court based upon said petition and served upon the said Edna G. Milens, and hearing having been had upon said order on the 6th day of July, 1927, at which hearing said Edna G. Milens appeared in person and by her attorney and the Referee having heard the testimony in support of said petition and being fully advised, and a decision having been rendered thereon.

Now, on reading and filing the petition of George P. Clark, trustee in bankruptcy herein, and considered the testimony offered in support of said petition, and being fully advised,—

IT IS, UPON MOTION OF COAN & ROSENBERG, ATTORNEYS FOR TRUSTEE, ORDERED that the prayer of the trustee's petition herein be and the same is hereby granted and it is further ordered that Edna G. Milens, the above-

named bankrupt, account for and pay over within five days from the date of this order, to George P. Clark, trustee in bankruptcy of the estate of Edna G. Milens, bankrupt, the sum of \$5,377.37 belonging to said estate and which amount this Court now finds is in her possession and under her control.

A. M. CANNON,  
Referee.

Dated this 22d day of July, 1927. [4]

---

[Title of Court and Cause.]

#### FINDINGS OF REFEREE.

An order to show cause having been issued out of this court upon the petition of the trustee, which petition prayed that the bankrupt be required to show cause before this court why an order should not be made directing the bankrupt to forthwith deliver and pay over to George P. Clark, trustee in bankruptcy of this estate, the sum of Five Thousand Three Hundred and Seventy-seven Dollars and Thirty-seven Cents (\$5,377.37), alleged to be intentionally and wilfully concealed by said bankrupt from the trustee, and an order to show cause having issued out of this court and having been served upon said bankrupt requiring her to appear before this court on the first day of July, 1927, at the hour of ten o'clock A. M. of said day, and the said bankrupt having appeared by and through her attorney and requested that said matter be continued until

the 6th day of July, 1927, at 9:30 A. M. and on said date, to wit, the 6th day of July, 1927, at the hour of 9:30 A. M., said bankrupt appearing in response to said order to show cause, in person and by and through her attorney, the trustee in bankruptcy having appeared at said time and place by and through his attorneys Coan & Rosenberg and testimony being thereupon offered and taken before this court, and the matter having been submitted to this court for a decision, the Referee does now make the following

### FINDINGS OF FACTS.

#### I.

That the bankrupt, Edna G. Milens, during the year 1926, conducted a shoe-store in the City of Portland, Oregon, and that during said year she received in cash from the sale of merchandise in said [5] business the sum of \$18,733.62. That out of said sum expenses of the business were paid amounting to the sum of \$5,042.26 and merchandise accounts were paid amounting to the sum of \$6,308.25. The Court further finds that during said year the bankrupt drew in checks in her own name for her personal use the sum of \$2,005.74.

#### II.

The Referee further finds that the bankrupt drew in cash out of the moneys actually received in cash during the year 1926 the sum of \$5,377.37, which sum was in addition to the amount of \$2,005.74 drawn by the bankrupt by means of checks out of the business' bank account.

## III.

The Referee further finds that in addition to the money drawn by the bankrupt both in checks and cash, the bankrupt's husband conducted the store and was paid a salary out of said business for his services.

## IV.

The Referee further finds that of the sum of \$5,377.37 withdrawn by the bankrupt from the business in cash, a large amount was drawn therefrom immediately preceding the adjudication in bankruptcy herein.

## V.

The Referee further finds that the bankrupt, although given every opportunity to explain what has become of said money, has wholly failed to account for the use of said money or to give any plausible explanation as to the use thereof and the Referee finds that said sum of \$5,377.37 was in the possession of the bankrupt at the date of the adjudication in bankruptcy herein and was and now *in* concealed by said bankrupt from *here* trustee in bankruptcy, George P. Clark.

## VI.

The Referee further finds that the said bankrupt Edna G. Milens, now has in her possession said sum of \$5,377.37, which she has failed and refused and still fails and refuses to account for or pay over to the trustee and which sum the Referee finds the bankrupt does now knowingly and fraudulently and wilfully conceal from her trustee in bankruptcy.

Dated this 22d day of July, 1927.

A. M. CANNON,

Referee. [6]

Filed November 21, 1927. [7]

---

AND AFTERWARDS, to wit, on the 17th day of March, 1928, there was duly filed in said court an order to show cause for contempt, in words and figures, as follows, to wit: [8

[Title of Court and Cause.]

RULE TO SHOW CAUSE WHY EDNA G. MILENS SHOULD NOT BE PUNISHED FOR CONTEMPT FOR FAILURE TO OBEY LAWFUL ORDER.

It appearing to this court that A. M. Cannon, Esquire, a Referee in Bankruptcy of this court, having filed in this court his certificate to which is attached a copy of a lawful order made by said Referee on the 22d day of July, 1927, after a hearing before said Referee at which hearing said Edna G. Milens, Bankrupt, was present in person and by her attorney and said order having been made in the presence of the said Edna G. Milens and her attorney, J. H. McMennamin, and thereafter a copy of said order having been personally served upon the said Edna G. Milens and there being also attached to said certificate a copy of said Referee's findings upon said hearing and the certificate of said Referee showing that the said Edna G. Milens

has failed to comply with said order so made by the Referee, and further that the time in which to comply therewith has now elapsed and expired, and it further appearing from the records of this court that on the 21st day of November, 1927, an order was entered in this court ordering the said Edna G. Milens to show cause before this court on Monday the 5th day of December, 1927, at ten o'clock A. M., why she should not be adjudged guilty of contempt of court for failure to comply with the lawful order of said Referee, which order of this court has not been served upon the said Edna G. Milens,—

NOW, THEREFORE, IT IS HEREBY ORDERED, that Edna G. Milens show cause before this court at the Federal Court House in the City of Portland, Oregon, on Monday, the 26th day of March, 1928, at ten o'clock A. M. of said day, or as soon thereafter as counsel can be heard, why she should not be adjudged guilty of contempt of court for failure to comply with the lawful order of said Referee. [9]

IT IS FURTHER ORDERED that service of a copy of this order together with a copy of the referee's certificate shall be sufficient service upon the said Edna G. Milens if made on or before the 20th day of March, 1928.

R. S. BEAN,  
Judge.

Dated this 17th day of March, 1928.

Filed March 17, 1928. [10]

AND AFTERWARDS, to wit, on the 26th day of March, 1928, there was duly filed in said court an answer, in words and figures as follows, to wit: [11]

[Title of Court and Cause.]

ANSWER TO RULE TO SHOW CAUSE WHY  
EDNA G. MILENS SHOULD NOT BE  
PUNISHED FOR CONTEMPT FOR FAIL-  
URE TO OBEY LAWFUL ORDER.

Comes now Edna G. Milens, the bankrupt person above named, and for answer to said rule of court in said cause bearing date the 17th day of March, 1928, admits, denies and alleges, as follows:

I.

Said bankrupt herewith submits herself to the above-entitled court and throws herself wholly and completely upon the mercy of the Court.

II.

Said bankrupt, in answer to said rule to show cause, denies in the premises that she ever disobeyed any rule of the Court in the above-entitled cause.

III.

Said bankrupt admits that the Referee in Bankruptcy did, heretofore, make a referee's certificate of contempt for failure to obey lawful order of the Court.

IV.

Said bankrupt alleges that said alleged findings of fact do bear date the 22d day of July, 1927, and

sand bankrupt admits that she was present at a hearing before said Referee, whereat the matter of Five Thousand Three Hundred Seventy-Seven and 37/100 (\$5,377.37) Dollars was a matter of contention before the said court. Said bankrupt alleges with reference thereto that she has no recollection of any order having been served upon her to pay over \$5,377.37, and does not now recollect any order having been served upon her, requiring her to be and appear for any contempt orders, or with reference [12] to contempt matters, save and except, that certain order above noted, bearing date March 17th, 1928, requiring her to be and appear before the above-entitled court on Monday, the 26th day of March, 1928.

#### V.

Said bankrupt further alleges that she takes exception to and denies the correctness of the finding of fact herein, wherein said Referee in Bankruptcy, heretofore, in paragraphs IV, V, and VI, of his said findings of fact, found as follows:

#### IV.

“The Referee further finds that of the sum of \$5,377.37 withdrawn by the bankrupt from the business in cash, a large amount was drawn therefrom immediate preceding the adjudication in bankruptcy herein.

#### V.

The Referee further finds that the bankrupt, although given every opportunity to explain what has become of said money, has wholly



failed to account for the use of said money or to give any plausible explanation as to the use hereof and the Referee finds that said sum of \$5,377.37 was in the possession of the bankrupt at the date of the adjudication in bankruptcy herein and was and now is concealed by said bankrupt from her trustee in bankruptcy, George P. Clark.

The Referee further finds that the said bankrupt Edna G. Milens, now has in her possession said sum of \$5,377.37 which she has failed and refused and still fails and refuses to account for or pay over to the trustee and which sum the Referee finds the bankrupt does now knowingly and fraudulently and wilfully conceal from her trustee in bankruptcy.”

Said bankrupt alleges, with reference thereto, notwithstanding the findings of said Referee, she did not have in her possession, at any time, said alleged cash of \$5,377.37 and has never had said amount, or any amount of money with reference thereto, then, ever since, or now,

## VI.

Said bankrupt further alleges that she is wholly and completely financially embarrassed and has been for some time past, physically disabled.

Said bankrupt, as affirmative allegation herein, alleges:

### I.

That there is a complete failure of proof in said cause, of facts warranting the findings of said Referee in said cause. [13]

## II.

Said bankrupt further alleges that she has heretofore, in said cause, filed her petition to be discharged in bankruptcy; that there were no objections filed, save and except, by the J. P. Smith Shoe Company, a corporation, of Chicago, State of Illinois, which objection was filed on the 4th day of February, 1928. Said bankrupt further alleges that she filed her answer thereto; that a hearing was had thereon before said Referee on March 19, 1928; that said bankrupt, in said answer, prayed that the objection of said J. P. Smith Shoe Company, a corporation, be dismissed with prejudice; that said Referee, A. M. Cannon, in said cause, at said hearing on said 19th day of March, 1928, set, as a Special Master, and, as said bankrupt is now informed and believes, did, as such Special Master, deny the prayer of the answer of said bankrupt to said objections of said J. P. Smith Shoe Company, a corporation, to which acts and rulings of said Master, your bankrupt took exceptions on the ground that said Special Master, as such, at said time and place, acted outside of his authority in such cases made and provided.

## III.

Said bankrupt shows to the Court that she has done everything within her power in the premises to keep within the law and to abide by all judgments of the Court and Referee in Bankruptcy herein; that if, in any particular, she has made any mistake, she alleges that it is without her knowledge and fault; that she makes this answer to said rule of

Court for the purpose of setting before the Court, the facts herein as she knows them, to the end that she may be purged of any contempt of court herein.

WHEREFORE, because of the premises, said bankrupt prays that her petition for discharge in bankruptcy be allowed; that said objections of the J. P. Smith Shoe Company, a corporation, in the premises, be denied with prejudice; that the rulings of said Special Master on legal points in said cause in said hearing on March 19, 1928, [14] be vacated and set aside; that said bankrupt be purged of and from any contempt of court herein, and for such other and further relief herein to the end that she may be discharged as a bankrupt in said cause, as heretofore prayed for by her.

EDNA G. MILENS, (Signed)

Bankrupt.

JAMES H. McMENAMIN, (Signed)

Attorney for Said Bankrupt.

State of Oregon,  
County of Multnomah,—ss.

I, Edna G. Milens, being first duly sworn say that I am the bankrupt in the within entitled cause, and that the foregoing answer to rule to show cause, etc., is true as I verily believe.

EDNA G. MILENS.

Subscribed and sworn to before me this 23d day of March, 1928.

[Seal]

T. J. CLEETON,

Notary Public for Oregon.

My commission expires Feb. 9, 1929.

Due and timely service of the foregoing, and the receipt of a duly certified copy thereof, as required by law, is hereby accepted in Portland, ——— County, Oregon, on this 25th day of March, 1928.

RALPH A. COAN,  
Attorney for Trustee.

Filed March 26, 1928. [15]

---

AND AFTERWARDS, to wit, on the 15th day of June, 1928, as for April 23, 1928, there was duly filed in said court, an opinion, in words and figures as follows, to wit: [16]

[Title of Court and Cause.]

OPINION (ORAL).

Portland, Oregon, April 23, 1928.

R. S. BEAN, District Judge.—In this matter, Mrs. Milens was adjudged a bankrupt on the 3d of December, 1926. On the 21st of January of the following year on the hearing of a petition of the Trustee for an order requiring her to turn over to him certain property, the Referee found that during the year 1926 the bankrupt had received in cash from the sale of merchandise between \$17,000 and \$18,000 and had paid out for expenses and purchases, money and checks, the sum of \$13,000, leaving a balance of about \$5,000.00, which the Referee found that the bankrupt, although given an opportunity, had failed to account

for, and that she had that in her possession at the time of the adjudication and at the time of the order. He thereupon entered an order requiring her to pay over this amount of money to the Trustee within a given time, and the order was served upon the bankrupt, and upon her failure to comply with it, the facts were certified to the Court, and an order made requiring her to appear and show cause why she should not be punished for contempt. For answer to the show-cause order, the bankrupt says that she did not at the time the order was made by the Referee and does not now have possession of the money or any part thereof, and is therefore unable to comply with the order.

Now there is a decided conflict in the authorities as to how far if at all the Court, in a proceeding for contempt for failure to comply with the terms of the order, may go behind the findings of the Referee and examine into the merits of the case, one line of authorities holding that the Referee's findings are conclusive, and that the only question for the Court in a contempt [17] proceeding for failure to comply therewith, is to inquire what the bankrupt has done with the property since the order of the Referee, and whether she had present ability to comply with it. Another line holds that in a contempt proceeding, the Court may go back of the order of the Referee and examine the facts. The practice seems to have been considered more fully by the Circuit Court of Appeals of the Third Circuit than elsewhere, and the rule there is that in a contempt proceeding there

are two steps, first the finding of the Referee that the bankrupt had possession of the property which he was ordered to turn over, and that such order is final unless reviewed, and second, a proceeding for contempt, in which the only question is whether the bankrupt is then physically able to comply with the order previously made. But whatever the true rule may be, the Court may, of course, examine the findings and order of the Referee to determine whether or not it warrants the extraordinary power of punishing as for a contempt. The findings of the Referee are not that the bankrupt had in her possession any specific money or property belonging to the estate, which she was ordered to turn over to the trustee, but rather that she had received a certain sum of money during a given period, and was able to account for only a part thereof to the satisfaction of the Referee, and therefore that she must have the balance in her possession. These findings would probably be sufficient to justify, in a proper proceeding, a judgment against the alleged bankrupt for the balance, but are they sufficient to justify her punishment by imprisonment for contempt? I think not. The Bankrupt Act requires the Referee to certify the facts to the Court, and the Court to examine into the matter and if, in its judgment, the evidence is sufficient to proceed as for a contempt, but this statute does not invest the court of bankruptcy with superior powers to punish for contempt than is vested in the courts generally. What is legally sufficient to purge a contempt in other courts is

sufficient in a like contempt in the bankruptcy court. The bankruptcy court may [18] punish for contempt for failure to comply with a turnover order, provided the bankrupt has the property in his possession or under his control. The power to punish for contempt is an extraordinary power and should be carefully exercised and only when its propriety is beyond reasonable doubt. It should appear that there has been a wilful disobedience of the order, and that the party complained of has acted in bad faith for the purpose of evading the order. The law makes ample provision for the punishment of the bankrupt for fraudulently concealing his property or false swearing, and there is therefore no reason for a Court to imprison a bankrupt for the purpose of compelling him to turn over property in doubtful cases. It should not be used and cannot be used for the purpose of enforcing the payment of a debt. Before resort should be had to this proceeding it should clearly appear that the bankrupt actually had in his physical possession or under his control some specific money or property belonging to the estate, which he was ordered to turn over to the trustee, and which he wilfully refused to do. One Judge has said that the property should be specifically identified to enable the marshal to take it into his possession. It is not enough, as I understand, that through some process of reasoning the bankrupt may be held liable. The effect of the findings and order of the referee in this case is that the bankrupt has not accounted for all the money received

by her, and is therefore liable to the estate for the difference. To imprison her on that account would be to imprison her for a debt which is, of course, unthinkable.

So I take it that under this record an order discharging the bankrupt should be made.

Filed June 15, 1928, as of April 23, 1928. [19]

---

AND AFTERWARDS, to wit, on the 28th day of April, 1928, there was duly filed in said court an order purging of contempt, in words and figures as follows, to wit: [20]

[Title of Court and Cause.]

#### ORDER PURGING OF CONTEMPT.

Said cause having come on for hearing before the above-entitled court on Monday, the 16th day of March, 1928, upon rule to show cause why Edna G. Milens should not be punished for contempt for failure to obey lawful order, said Edna G. Milens appearing in person and by her counsel, James H. McMenamin, and the trustee in bankruptcy herein being represented by Coan & Rosenberg, attorneys at law, and the Court having heard the argument of the respective parties, and having taken said matter under consideration, and being fully advised in the premises, does now

ORDER that said contempt proceedings against said Edna G. Milens be, and the same are hereby



dismissed and she is purged of contempt in said cause.

(Signed) R. S. BEAN,  
Judge.

Filed April 28, 1928. [21]

United States of America,  
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing copy of Referee's certificate for contempt, order to show cause thereon, answer, opinion of the Court, and order in cause No. B.—10261, in the Matter of Edna G. Milens, Doing Business as Guarantee Shoe Store, Bankrupt, has been by me compared with the original thereof, and that each is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this 15th day of June, 1928.

[Seal]

G. H. MARSH,  
Clerk.

By \_\_\_\_\_,  
Deputy Clerk. [22]

## CITATION ON APPEAL.

United States of America,—ss.

The President of the United States, to Edna G. Milens, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the District of Oregon, wherein George P. Clark, Trustee in Bankruptcy of the Estate of Edna G. Milens, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WM. B. GILBERT, United States Circuit Judge for the Ninth Judicial Circuit, this 24th day of May, A. D. 1928.

WM. B. GILBERT,  
United States Circuit Judge.

United States of America,—ss.

On this 5th day of June, in the year of our Lord one thousand nine hundred and twenty-eight, personally appeared before me, Ralph A. Coan, the subscriber, and makes oath that he delivered a true copy of the within citation together with copy

of petition for order allowing appeal, assignments of error and order allowing appeal to James H. McMenamain, attorney for Edna G. Milens.

RALPH A. COAN.

Subscribed and sworn to before me at Portland, this 5th day of June, A. D. 1928.

[Seal]            ABE EUGENE ROSENBERG,  
Notary Public for Oregon.

My commission expires Oct. 31, 1931. [23]

---

[Endorsed]: No. 5500. United States Circuit Court of Appeals for the Ninth Circuit. George P. Clark, Trustee in Bankruptcy of the Estate of Edna G. Milens, Appellant, vs. Edna G. Milens, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Oregon.

Filed June 18, 1928.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

---

United States Circuit Court of Appeals for the  
Ninth Circuit.

In the Matter of EDNA G. MILENS, Doing Business as GUARANTEE SHOE STORE,  
Bankrupt.

PETITION FOR ORDER ALLOWING AP-  
PEAL FROM AN ORDER MADE BY THE  
DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF  
OREGON PURGING EDNA G. MILENS  
OF CONTEMPT.

To the Honorable Judges of the United States Cir-  
cuit Court of Appeals for the Ninth Circuit:

Your petitioner, George P. Clark, Trustee in Bankruptcy of the above-entitled bankrupt estate, conceiving himself aggrieved by an order of the District Court of the United States for the District of Oregon entered on the 28th day of April, 1928, dismissing certain contempt proceedings against the said Edna G. Milens, bankrupt, for failing to comply with a valid and lawful order made by the Honorable A. M. Cannon, Referee in Bankruptcy, dated the 22d day of July, 1927, which order required the said Edna G. Milens to pay over to George P. Clark, as Trustee in Bankruptcy of the Estate of Edna G. Milens, bankrupt, the sum of \$5,377.37 found by the Referee to be in the possession and control of said bankrupt on said day and fraudulently and wilfully concealed by her from her trustee and which order of the District Court of the United States for the District of Oregon also purged the said Edna G. Milens of contempt for failure to obey the order of the Referee, does hereby petition for an appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit and prays that his appeal may be

allowed and that a citation issue directed to Edna G. Milens, bankrupt, commanding her to appear before the United States Circuit Court of Appeals for the Ninth Circuit to do and receive what may appertain to justice to be done in the premises and that a transcript of the record, proceedings and other papers upon which said order was based, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

GEORGE P. CLARK,

Trustee in Bankruptcy of Edna G. Milens, Bankrupt.

COAN & ROSENBERG,

Attorneys for the Trustee and Petitioner.

State of Oregon,

County of Multnomah,—ss.

I, George P. Clark, being first duly sworn, depose and say that I am the duly qualified and acting trustee of the above estate; that I have read the foregoing petition and that the same is true as I verily believe.

GEORGE P. CLARK,

Subscribed and sworn to before me this 22d day of May, 1928.

[Seal]

RALPH A. COAN,

Notary Public for Oregon.

My commission expires May 11, 1932.

[Endorsed]: Petition for Order Allowing Appeal from an Order Made by the District Court of the United States for the District of Oregon Purging

Edna G. Milens of Contempt. Filed May 24, 1928.  
Paul P. O'Brien, Clerk.

---

United States Circuit Court of Appeals for the  
Ninth Circuit.

In the Matter of EDNA G. MILENS, Doing Business as GUARANTEE SHOE STORE, Bankrupt.

#### ASSIGNMENTS OF ERROR.

Now comes George P. Clark, Trustee in Bankruptcy of the estate of Edna G. Milens, bankrupt, and files the following assignments of error on appeal from an order made and entered by the District Court of the United States for the District of Oregon, on the 28th day of April, 1928, dismissing contempt proceedings against Edna G. Milens and purging her of contempt for failure to obey an order of the Referee made on the 22d day of July, 1927.

1. That the United States District Court for the District of Oregon erred in making and entering an order on the 28th day of April, 1928, dismissing the contempt proceedings against the bankrupt Edna G. Milens and purging her of contempt for failure to obey the lawful order of the Referee in Bankruptcy dated the 22d day of July, 1927, requiring her to turn over the assets of said estate concealed by her in the sum of \$5,377.37 to George P. Clark, Trustee in Bankruptcy of her estate.

2. That the United States District Court for the District of Oregon erred in dismissing the contempt proceedings and purging the bankrupt, Edna G. Milens, of contempt without requiring any affirmative showing by Edna G. Milens, bankrupt, or the offering of any testimony by her showing the disposition or disappearance of the sum of \$5,377.37, which sum the Referee in Bankruptcy herein found she had in her possession on the 22d day of July, 1927, and which sum the Referee further found she was fraudulently and wilfully concealing from her trustee and which sum the Referee ordered turned over by the said bankrupt to George P. Clark, her trustee in bankruptcy.

3. That the United States District Court for the District of Oregon erred in failing and refusing to make and enter an order in said proceeding adjudging the bankrupt, Edna G. Milens, in contempt for failing to obey the lawful order of the Referee requiring her to pay over to George P. Clark, her Trustee in Bankruptcy, the sum of \$5,377.37, which sum the Referee had ordered paid over to the said trustee by said bankrupt and from which order of the Referee no review or appeal was taken.

4. That the United States District Court for the District of Oregon erred in failing to accept, adopt and follow the findings of the Referee in Bankruptcy, to which findings no objections were made by the bankrupt and upon which findings an order was made and entered directing the bankrupt to pay to George P. Clark, Trustee in Bankruptcy of her

estate the sum of \$5,377.37, from which order no review or appeal was ever taken.

WHEREFORE George P. Clark, Trustee in Bankruptcy of the estate of Edna G. Milens, bankrupt, prays that the said order so made on the 28th day of April, 1928, by the District Court of the United States for the District of Oregon may be vacated and that an order be made adjudging and decreeing Edna G. Milens in contempt for failure to obey the lawful order of the Referee in Bankruptcy dated the 22d day of July, 1927, requiring her to pay over to George P. Clark, her Trustee in Bankruptcy, the sum of \$5,377.37.

COAN & ROSENBERG,

Attorneys for George P. Clark, Trustee in Bankruptcy of Edna G. Milens, Bankrupt.

[Endorsed]: Assignments of Error. Filed May 24, 1928. Paul P. O'Brien, Clerk.

---

United States Circuit Court of Appeals for the  
Ninth Circuit.

In the Matter of EDNA G. MILENS, Doing Business as GUARANTEE SHOE STORE, Bankrupt.

ORDER ALLOWING APPEAL WITHOUT  
BOND.

Now on this 24 day of May, 1928, the above-entitled proceeding coming on regularly to be heard upon the petition of George P. Clark, Trustee in



Bankruptcy of the estate of Edna G. Milens, bankrupt, praying that an appeal may be allowed him herein from that certain order of the District Court of the United States for the District of Oregon made and entered on the 28th day of April, 1928, and that citation issue as provided by law and that a transcript of the records, proceedings and other papers upon which said order was based, duly authenticated, be transmitted to the Circuit Court of Appeals for the Ninth Circuit and proper assignments of error having been presented with said petition and it appearing to the Court that said petitioner is entitled to said appeal,—

NOW, THEREFORE, ON MOTION OF RALPH A. COAN, of counsel for petitioner;—

IT IS HEREBY ORDERED that the said petition be and the same is hereby granted and the appeal of the petitioner from said order to the United States Circuit Court of Appeals for the Ninth Circuit is hereby allowed; and it further appearing that the appellant herein is the Trustee in Bankruptcy, it is further ordered that no bond be required of him.

WM. B. GILBERT,  
Senior U. S. Circuit Judge.

Dated this 24 day of May, 1928.

[Endorsed]: Order Allowing Appeal Without Bond. Filed May 24, 1928. Paul P. O'Brien, Clerk.

